

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims 14-15 and 18-37 are pending after entry of the amendments set forth herein.

Claims 14-15 and 18-35 were examined. Claims 14-15, 18, 20 and 25 were rejected. Claims 29-35 were allowed. Claims 19, 21-24 and 26-28 were objected to as depending from a rejected base claim but containing allowable subject matter.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

In the Official Action of July 20, 2005, claims 14-15, 20 and 25 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Bugge, U.S. Patent No. 5,025,779. The Examiner asserted that Bugge discloses a device as claimed, having a first arm connecting to blade 2 a second arm connecting to blade 1, a frame connecting the first and second arms, and an adjusting mechanism including an adjusting member 7 for moving the arms toward and away from one another, and an adjusting screw 10 to move the second arm in an upward direction. The Examiner took the position that a mechanism can have more than one components, and interpreted the adjusting member 7 and adjusting screw 10 of Bugge together to read on the claimed mechanism.

Applicants respectfully disagree with the Examiner's consideration of the claimed mechanism. Claim 14 recites that the mechanism operably connects the first and second arm members, and that operation of such mechanism also moves one of the arm members and rib engaging blades in an upward direction with respect to the other arm member and rib engaging blade. While the mechanism 7 of Bugge operates to move arm members apart, it does not also move one of the arm members upward. The adjusting screw 10 does not operably connect the arm members. Thus, operation of the adjusting screw does not act to separate the arm members. Therefore neither of the mechanisms 7 or 10 of Bugge et al. performs as the claimed mechanism. The operations are independent, so that even if the Examiner considers both mechanisms together, which Applicants respectfully submit it would be improper to do, operation of such mechanism to spread the arms apart still does not also drive one of the blades in an upward direction relative to the other. A separate operation is required to lift the arm of Bugge.

Similar arguments apply to claim 20. Further, claim 20 has been amended above to recite that the claimed mechanism provides an action to drive the second arm member away from the first arm member and, with the same action, to drive the second blade and second arm vertically with respect to the first blade and first arm. Clearly Bugge requires independent actions by mechanism 7 and mechanism 10, as noted above.

Claims 15 and 25 are allowable over Bugge for at least the same reasons provided above with regard to claims 14 and 20, from which these depend, respectively.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 14-15, 20 and 25 under 35 U.S.C. Section 102(b) as being anticipated by Bugge, U.S. Patent No. 5,025,779, as being inappropriate.

Claims 14-15, 20 and 25 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Phillips, U.S. Patent No. 4,865,019. The Examiner asserted that as arm 14 is moved away from arm 13, blades 46 pull the edge 37 upward and blades 46 move upward. There does not appear to be any disclosure by Phillips that the blades 46 actually move upward, contrary to what has been asserted by the Examiner. Rather, the tissue edge is drawn up against the counter pressure bar 35 and possible over it as it is guided by the curved fork like structure 48 of the rake retractors 46. Figs. 1 and 9 also appear to show that the rake retractors 46 are not actually lifted. Further, Applicants have amended claims 14 and 20 above to indicate that the arm as well as the blade is lifted relative to the other arm and blade. Clearly the arm 14 of Phillips is not lifted by the action described by the Examiner, as the arms only move laterally.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 14-15, 20 and 25 under 35 U.S.C. Section 102(b) as being anticipated by Phillips, U.S. Patent No. 4,865,019, as being inappropriate.

Claim 18 was rejected under 35 U.S.C. Section 103 as being unpatentable over Bugge (U.S. Patent No. 5,025,779) in view of Coker (U.S. Patent No. 5,363,841). Coker was applied as teaching the use of a retractor having blades with fingers.

Coker does nothing to make up for the deficiencies of Bugge in meeting all of the limitations of claim 14. Accordingly, since claim 18 depends from claim 14, it is respectfully submitted that claim 18 is allowable over Bugge and Coker for at least the same reasons that claim 14 is allowable over Bugge, as described above.

Accordingly, for at least the above reasons, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 18 under 35 U.S.C. Section 103 as being unpatentable over Bugge

(U.S. Patent No. 5,025,779) in view of Coker (U.S. Patent No. 5,363,841), as being clearly inappropriate.

Applicants wish to extend their thanks to the Examiner for the allowance of claims 29-35.

New claims 36 and 37 have been provided above to combine the recitations of claims 14 and 19 (prior to the current amendment of claim 14) and 25 and 26 (prior to the current amendment of claim 25), respectively. The Examiner had previously objected to claims 19 and 25 as containing allowable subject matter. Accordingly, it is respectfully submitted that new claims 36 and 37 are allowable.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-006CON6.

Respectfully submitted,

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10/20/08

By: _____



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